

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION

MDL No. 1456

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

---

THIS DOCUMENT RELATES TO  
THE CLASS ACTION

**TRACK TWO DEFENDANTS' MOTION TO STRIKE HAROLD BEAN**

Plaintiffs for the first time name a new individual class representative, Mr. Harold Bean, in their Motion to Certify Claims With Respect to Track Two Defendants. This attempt by plaintiffs to add Mr. Bean without first obtaining leave to amend the pending complaint violates the prior orders of this Court and the Federal Rules of Civil Procedure. In addition, it is prejudicial to the Track Two Defendants. Accordingly, the Track Two Defendants respectfully move this Court to strike those portions of Plaintiffs' Motion and supporting documents relating to Mr. Bean.

In the alternative, the Track Two Defendants request that the Court grant defendants a period of ninety (90) days from the date of the Court's ruling to respond to plaintiffs' request to certify him as a class representative. During that period, all other class certification proceedings with respect to the Track Two Defendants will remain on schedule. The parties will then separately brief the issues regarding Mr. Bean.

The grounds for this motion are set forth in the accompanying memorandum of law.

Respectfully submitted,

ON BEHALF OF THE TRACK TWO  
DEFENDANTS,

/s/ Richard D. Raskin

Richard D. Raskin

Michael Doss

Jaime L.M. Jones

Sidley Austin LLP

One South Dearborn Street

Chicago, Illinois 60603

Telephone: (312) 853-7000

Facsimile: (312) 853-7036

Attorneys for Defendant Bayer Corporation

**CERTIFICATION PURSUANT TO LOCAL RULE 7.1**

I certify that the moving parties have communicated with counsel for Plaintiffs in an effort to resolve the dispute referred to in this motion, and that the parties have not been able to reach agreement with respect thereto.

/s/ Richard D. Raskin  
Richard D. Raskin

**CERTIFICATE OF SERVICE**

I, Richard D. Raskin, hereby certify that I am one of Bayer Corporation's attorneys, and that I caused a true and correct copy of the foregoing TRACK TWO DEFENDANTS' MOTION TO STRIKE HAROLD BEAN to be served on all counsel of record electronically by causing same to be posted via LexisNexis, this 16th day of May, 2006.

/s/ Richard D. Raskin  
Richard D. Raskin